

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>10/24/2023</u>
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WILBUR IRICK,

Petitioner,

-v.-

MICHAEL CAPRA,  
Superintendent of  
Sing Sing Correctional Facility,

Respondent.  
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ORDER

23-CV-9123 (JLR) (JLC)

**JAMES L. COTT, United States Magistrate Judge.**

Wilbur Irick has petitioned this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and the petition has been referred to the undersigned for a report and recommendation (Dkt. No. 6). In accordance with Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, I have considered the petition preliminarily and direct that respondent shall file either an answer or, if respondent has a basis on which to seek to have the petition denied or dismissed that does not require an answer, a motion with respect to the petition. To this end, the Court directs as follows:

(1) respondent shall file such answer or motion on or before **December 27, 2023**;

(2) the answer or motion shall include an affidavit describing any facts relevant to the answer or motion and all documents necessary for the adjudication of this matter, including but not limited to transcripts of any

- relevant proceedings, the briefs submitted on appeal, the record in any state post-conviction proceedings, and such other information as may be necessary for this Court to adjudicate the petition;
- (3) the submission shall include a memorandum of law fully describing the factual and legal basis underlying the respondent's opposition to the petition and each statement of fact therein shall be accompanied by a citation to the appropriate transcript, affidavit, or document by paragraph or page number;
- (4) petitioner shall have **thirty (30) days from the date on which he is served with respondent's papers** to file a response; and the petition will be considered fully submitted as of that date; and
- (5) a courtesy copy of all papers served and filed shall be sent to the undersigned at 500 Pearl Street, New York, NY 10007.

The Clerk of the Court is directed to serve a copy of this Order and any other orders previously issued by the Court, the underlying petition, and any documents filed by petitioner in support of the underlying petition (or in response to any order previously issued by the Court) on the Attorney General of the State of New York, and on the District Attorney of New York County. Such service shall be made by ECF pursuant to Standing Order 21-MC-380.

**SO ORDERED.**

Dated: October 24, 2023  
New York, New York

  
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JAMES L. COTT  
United States Magistrate Judge